IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 197 OF 2004

Shri Rohit Venkatesh Prabhu,
Flat No.6, Nandan Apartments,
Near Kurthkoti Nursing Home,
Bhusari Colony, Opposite P.M.T. Depot,
Paud Main Road, Poona – 38. ..... Appellant.

V/s.

Shri Nanasaheb Sanyasi alias
Purushottam Udhav Sanyasi,
Piusha Complex, Hotel Piusha,
Erandvana, Near Kalmadi House,
Pune. ..... Respondent.

Mr. Zeller de Souza, Advocate for the appellant.

Mr. S.S. Kantak, Advocate for the respondent.

CORAM : B.H. MARLAPALLE, J.

DATE : OCTOBER 15, 2004.

ORAL ORDER :

Heard Mr. Zeller D'Souza, the learned Advocate for the appellant, who was impleaded as the sole defendant in Special Civil Suit No. 95/99 filed by the present respondent for recovery of an amount of Rs. 5,09,950/-, with interest.

2. It was contended by the plaintiff that he was introduced to the

defendant while the latter was working with M/s. Sai Services and in the passage of time, they kept meeting on few occasions wherein the defendant had disclosed that he was interested to start his own business in the name of “Sushant Services” at Mulgaon, Bicholim. The plaintiff was also interested in diverting his business for the sake of his son, Babasaheb and, accordingly, he purchased the business premises bearing Shop No.4, Swastik Building, Penha de Franca, House No.1593/1, situated at Alto Porvorim and the defendant volunteered to help the plaintiff. Under some pretext or the other, the defendant started borrowing money from the plaintiff for the purchase of assets at Sai Seva Services, Alto Porvorim. The plaintiff was informed that the defendant had purchased two four wheelers, but when he returned from Pune, he could not see any vehicle. The borrowings made by the defendant from the plaintiff reached to an amount of Rs.2,50,000/- for his personal use and subsequently, the plaintiff lent further amount of Rs. 3,59,995/-. By 4.7.1999, the total amount lent by the plaintiff to the defendant came to Rs.5,09,950/-. In November 1998, in the absence of the plaintiff and his son, the defendant visited the plaintiff's premises, took away some documents and cash of Rs.8,000/- and, therefore, a police complaint was lodged. In defence, the defendant contented that on his leaving M/s. Sai Services, the plaintiff started M/s. Sai Seva Services with the defendant as one of its partners and the said amount was invested for the purpose of the said partnership. The allegations of borrowing the amounts for personal expenses were denied.

3. The trial Court framed issues and held that the defendant had borrowed an amount of Rs.5,29,950/- from the plaintiff and he was required to repay the said amount to the plaintiff, with interest at 18 %. By way of evidence, the plaintiff while bringing several letters on record, examined himself as PW.1. He was cross examined by the defendant. The defendant entered the witness box on 25.4.2001, but stated that he was not prepared to depose. On the next date i.e. on 2.6.2001, he submitted an application for adjournment on the ground that he lost his mother on 22.5.2001. This application was allowed and the suit was fixed for recording the evidence of DW.1 on 4.7.2001, on which date, the defendant's Advocate submitted an application for adjournment contending that the defendant was sick. This application was rejected by the trial Court and the suit was fixed for arguments on 7.7.2001. Thereafter, the matter was adjourned to 25.7.2001, on which day the Advocate for the defendant prayed for time, which was granted and the matter was adjourned to 27.7.2001 for arguments. On 27.7.2001, the defendant's Advocate filed yet another application for adjournment. This was rejected and the Advocate for the defendant continued with his arguments.

4. It is clear from the Roznama of the trial Court that sufficient opportunities were offered to the defendant to examine himself and he failed to utilize them. There were no other witnesses who were sought to be examined in addition to himself, in defence. The documents which came on record and duly proved through the

testimony of PW.1, were the letters at Exhibit PW.1/C dated 4.2.1998, Exhibit PW.1/B dated 16.2.1998, Exhibit PW.1/E dated 25.3.1998, Exhibit PW.1/F dated 30.3.1998 and so on, up to Exhibit PW.1/S dated 23.9.1998, the last such communication is at Exhibit PW.1/X dated 24.11.1998 which specifically admitted that the defendant owed a sum of Rs. 5,07,300/- to the plaintiff and he had promised to pay that amount by January 1999. The legal notice was issued on 29.4.1999, when the plaintiff realised that the defendant was not paying the amount as promised.

5. It is, thus, clear that the evidence placed on record by the plaintiff amply proved that the defendant had accepted to repay the amount of Rs.5,07,300/- by his letter dated 24.11.1998. Therefore, on the basis of this admitted liability, the suit was decreed, but with interest at 18 % by the impugned Judgment and Order dated 10.8.2001. The said decision does not suffer from any errors and the contentions that the defendant was not given sufficient opportunity to lead evidence, are far-fetched and not supported from any documents on record. The prayer for remand is, thus, devoid of any merits.

6. In the result, this appeal fails and the same is, hereby dismissed in limine.

B.H. MARLAPALLE, J.

ssm.